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July 10, 1995

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FEDERAL COMMUNICATIONS COMMISSION
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HAND DELIVER

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

On behalf of Capital Cities/ABC, Inc., transmitted herewith for filing with the Commission are an original and ten copies of its Reply Comments in MM Docket Nos. 91-221 and 87-8.

If there are any questions in connection with the foregoing, please contact the undersigned.

Sincerely,

Roger Goodspeed

RG/ak
Enclosures

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Before the
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| In the Matter of | ) | |
| | ) | |
| Review of the Commission's Regulations Governing Television Broadcasting | ) | MM Docket No. 91-221 |
| | ) | |
| Television Satellite Stations Review of Policy and Rules | ) | MM Docket No. 87-8 |



REPLY COMMENTS OF CAPITAL CITIES/ABC, INC.

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July 10, 1995

## Table of Contents

Summary

In our initial comments, we submitted an Economic Analysis which demonstrated that the Commission's national ownership rule does nothing to further the goals of protecting competition and diversity and that the rule is anti-competitive because it prevents broadcasters from exploiting efficiencies and competing in markets in which they hold no market power. None of the other commenters has offered any reason, much less any economic research or rigorous analysis, to cause the Commission to doubt the correctness of our conclusions.

The comments submitted by the Citizens Communication Center and Media Access Project ("CCC/MAP") offers no empirical evidence to support its position that the rule harms diversity. This is hardly surprising since there is every reason to believe that group ownership increases diversity. Group owners have strong incentives, as a matter of self-interest, to devote as much or more attention and resources to local news than do non-group owners. An ABC study based on February 1995 ratings shows an unmistakable and strong correlation between local news performance and a station's commercial success.

The hypothesis put forward by the Network Affiliated Stations Alliance ("NASA") that allowing networks to own more stations would increase the networks' bargaining power over affiliates and destroy localism is unsupported by any economic analysis and is demonstrably false. First, affiliates have ample opportunity to broadcast locally-oriented programming during the substantial part of each broadcast day the networks do not program. Second, networks do not have the market power to force clearances. To the contrary, history shows that affiliates have reclaimed time periods from the network by refusing clearance. Moreover, networks have

always accommodated the affiliates' right to preempt programs unsuitable in their communities or to broadcast programs of greater local or national importance as provided in the Commission's "right to reject" rule. Finally, affiliates clear network programming not because they are forced to but because they recognize that high clearance levels are necessary to the success of the network/affiliate enterprise and thus to their own success.

NASA's fear that the networks will need non-owned affiliates less if they own more stations is unfounded, and, even if it were valid, it would not justify ownership restraints on network companies. The fear is unfounded because the network business is based on the ability to deliver to national advertisers a mass audience that covers all or substantially all markets. Therefore, a network cannot afford to ignore markets in which it does not own a station. Far from disregarding the small markets, the networks are continuing to pursue long-term deals and offer increased compensation in those markets.

Group ownership by network companies would make possible a number of demonstrable efficiencies. Ownership of additional stations would enable networks to spread the risk of their annual multi-billion dollar programming investments and provide a more stable and predictable source of revenue than the highly risky and variable television network business. At a time of declining network shares and growing competition in the video marketplace, the fears of NASA and others should not be permitted to stand in the way of the networks seeking to remain competitive through increased station ownership.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| | ) | |
| Television Satellite Stations Review of Policy and Rules | ) | MM Docket No. 87-8 |

To: The Commission

REPLY COMMENTS OF CAPITAL CITIES/ABC, INC.

Capital Cities/ABC, Inc. ("Capital Cities/ABC") submits herewith its Reply Comments in response to the Further Notice of Proposed Rule Making in the above-entitled proceeding ("Further Notice").[1] In connection with our opening comments in this proceeding, we (jointly with CBS, NBC and Westinghouse) commissioned an economic analysis of the Commission's ownership rules by Economists, Inc.[2] That analysis demonstrates that in today's video marketplace, which has experienced a tremendous increase in the number of video outlets and a comparable explosion

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[1] MM Docket Nos. 91-221, 87-8, Further Notice of Proposed Rule Making, FCC 94-322 (released January 17, 1995).

[2] An Economic Analysis of the Broadcast Television National Ownership, Local Ownership and Radio Cross-Ownership Rules (filed May 17, 1995) by Economists Incorporated (the "Economic Analysis").

in the number of nationally-distributed program services, the Commission's national ownership rule does nothing to further the Commission's goals of protecting competition and diversity. Elimination of the rule would not lead to any concentration of market power. To the contrary, the rule is anti-competitive because it prevents stations from being owned by entities most able to put them to efficient and valuable use and imposes an artificially small scale of operation on the broadcast industry. We also demonstrated that diversity would not be harmed by elimination of the rule because common ownership across markets would not lessen outlet diversity in any market. And we presented evidence that group owners generally tend to promote diversity.

None of the commenters has offered any reason, much less any economic research or rigorous analysis, to cause the Commission to doubt the correctness of our conclusions. In these Reply Comments, we respond to the two basic arguments offered against changing the rule:[3] (1) increased group ownership would adversely affect diversity,[4] and (2) increased concentration of station ownership in fewer companies, particularly the networks, would destroy localism.[5] The latter effect, it is argued, would flow from an alleged increase in network bargaining power over their affiliates

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[3] 47 C.F.R. 73.3555(e).

[4] <u>Comments of Black Citizens for a Fair Media, et al.</u>, submitted by Citizens Communications Center Project Institute for Public Representation and the Media Access Project (filed May 17, 1995), at 5-15 ("CCC/MAP Comments").

[5] <u>Comments of the Network Affiliated Stations Alliance</u> (filed May 17, 1995), at 2-9 ("NASA Comments").

that would purportedly allow the networks to thwart affiliates' local programming decisions.[6]

## I. Elimination of the National Ownership Limits Would Not Result in Any Reduction in Diversity.

The CCC/MAP Comments take no account of the benefits to competition of relaxing the current restrictions.[7] Indeed, they make no effort to perform any kind of economic analysis of competition in the relevant market sought by the Commission in this proceeding.[8] Rather, the comments are devoted entirely to non-economic-based arguments about effects on diversity that would purportedly arise from increased group ownership of television stations. The only evidence CCC/MAP submits in support has no probative value.[9]

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[6] NASA Comments at 7-8; Consolidated Comments of AFLAC Broadcast Group, Inc. (filed May 17, 1995), at 7-8 ("AFLAC Comments").

[7] See Comments of Capital Cities/ABC, Inc. (filed May 17, 1995), at 15-19.

[8] Further Notice, pars. 1, 141.

[9] The CCC/MAP Comments propose as well that, in assessing diversity of viewpoints, only television stations should count as voices because television has greater visual impact and immediacy than other media and because it is considered by many consumers to be their most important source of news. (See CCC/MAP Comments at 15-32.) But even accepting that characterization of television as true, it does not follow that the contributions to diversity made by radio, newspapers, magazines, cable and all other media should be ignored. Indeed, the Commission has previously rejected precisely such an argument noting that the "fact that the various media may not be perfect substitutes for one another does not negate their status as competing, antagonistic sources of information for the purposes of diversity analysis." Memorandum Opinion and Order, 100 FCC 2d 74, 57 RR 2d 966, par. 20 (1985) ("Ownership Reconsideration Order"). See also Ownership Order,

Contrary to the CCC/MAP Comments, there is no "empirical evidence" showing that greater concentration of ownership leads to decreased local news and public affairs programming.[10] CCC/MAP claims that a 1991 study by the Office of Communications of the United Church of Christ (the "OC/UCC Study") "found that the amount of locally-produced news and public affairs programming decreased as a result of deregulation" in 1984.[11] But the methodology of the OC/UCC Study is flawed and its claimed results unsubstantiated.[12] The Study -- which analyzed only 2% of local markets -- is not a representative sample and ignores factors that might affect stations' abilities to produce new programming, such as the

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pars. 25-30; Economic Analysis at 51-56. The Commission regularly includes media other than television and radio in assessing the relevant market "voices" contributing to local-market diversity when deciding applications for waiver of the one-to-a-market rule. See, e.g., Golden West Broadcasters, FCC 94-361 (released Feb. 21, 1995); KVI, Inc., FCC 94-55, 74 RR 2d 1315 (1994); BREM Broadcasting, FCC 94-57, 74 RR 2d 1335 (1994).

[10] CCC/MAP Comments at 8. The Commission has previously determined that significant diversity effects are to be evaluated on a local basis and has identified local news and public affairs as the focus of its diversity concerns. See, e.g., Report and Order, MM Docket No. 91-140, 7 FCC Rcd 2755, 70 RR 2d 903, par. 20 (1992), mod. on reconsideration, Memorandum Opinion and Order, 71 RR 2d 227 (1992); Report and Order, Gen. Docket No. 83-1009, 100 FCC 2d 17, 56 RR 2d 859, pars. 32, 44-56, 60 (1984) ("Ownership Order"), on reconsideration, Memorandum Opinion and Order, 100 FCC 2d 74, 57 RR 2d 966 (1985); Further Notice, pars. 63, 72, 74, 96.

[11] CCC/MAP Comments at 8 n. 10.

[12] The OC/UCC Study was submitted in response to the Commission's Notice of Inquiry, MM Docket No. 91-221, 6 FCC Rcd 4961 (1991). Exhibit A to the Comments of Capital Cities/ABC, Inc. (filed Aug. 24, 1992) in MM Docket No. 91-221 ("Capital Cities/ABC 1992 Comments"), contained a complete analysis showing that the OC/UCC Study was flawed in several ways and did not accurately portray the programming nationally of group-owned and non-group-owned stations.

economic climate and the debt service involved in acquiring new stations.[13] In consequence the OC/UCC Study does not support the proposition that increased group ownership will lead to decreased locally-oriented programming.[14]

The CCC/MAP similarly errs in its claim that a 1989 RTNDA survey "concluded that deregulation affected the decisions of many television stations in eliminating programming news."[15] In fact, the survey found that there was little evidence that deregulation had any effect on stations' news programming.[16] And, the survey

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[13] The Commission itself has already noted these concerns. See Notice of Proposed Rulemaking, MM Docket No. 91-221, 7 FCC Rcd 4111, par. 11 n. 23 (1992) ("it is not clear that the study is representative of television stations or markets in general") ("Notice").

[14] The OC/UCC study is also disingenuous in the way it uses its own statistics. To cite just one example, the study relies on a difference of .4% as being statistically significant where it supports its argument, but elsewhere dismisses a difference of 1% as being statistically insignificant when it does not support the argument. See Capital Cities/ABC 1992 Comments, Ex. A at 3. The CCC/MAP Comments also cite the testimony of Beverly J. Chain, director of the Office of Communication, United Church of Christ, in Public Interest in Broadcasting: Hearings Before the Subcommittee on Telecommunications and Finance of the House of Representatives Committee on Energy and Commerce, 102nd Cong., 1st Sess. 230 (1991). But that testimony merely repeats the flawed conclusions drawn from the OC/UCC Study that are presented in the CCC/MAP Comments. See id. at 237 (identifying the repeal of the "Commission's minimum programming guidelines" in 1984 as the cause of reduced locally originated programming).

[15] CCC/MAP Comments at 10, citing M. McKean and V. Stone, Why Stations Don't Do News, RTNDA Communicator, June 1991, at 22 ("RTNDA Article").

[16] RTNDA Article at 24. In any event, in assessing the impact of deregulation, the RTNDA Article makes no distinction between the Commission's 1984 elimination of required minimum levels of non-entertainment local and informational programming and the 1984-85 increase in national television station ownership limit from seven to twelve. See RTNDA Article at 23. Thus even if the article

made no distinction between group-owned and non-group-owned stations, rendering the data useless for assessing the likely effect on locally-oriented programming of increased group ownership.

In contrast to CCC/MAP's flawed data, there is strong evidence that group owners have strong incentives, as a matter of self-interest, to devote as much or more attention and resources to local news than non-group owners. A study by the ABC Affiliate Marketing and Research Department shows the unmistakable correlation between local news performance and commercial success. The study chose 40 markets (markets 1-10, 41-50, 91-100 and 141-150) as illustrative of television markets generally. In those markets, it compared local news performance, represented by ratings for the local early evening news, with overall commercial success, represented by ratings leadership sign-on to sign-off, 7:00 AM to 1:00 AM.[17] In 37 of the 40 markets, the station with the number one

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contained evidence that "deregulation" had a material effect on television local news and public affairs programming -- which it does not -- one could not draw any conclusions from the article relevant to the Commission's current proposal to increase the national ownership limit. CCC/MAP also cites After the Fairness Doctrine: Controversial Broadcast Programming and the Public Interest, 40 J. of Comm. 47, 51 (1990) in support of the argument that "deregulation" led to decreased news and public affairs programming in the late 1980's. Again, the particular "deregulation" allegedly causing the programming changes is unspecified, but the article makes no suggestion that group-owned stations showed more such decrease than non-group-owned stations, or that they showed any decrease at all.

[17] A copy of the study is attached hereto as Exhibit A. See also Ownership Order, par. 44 (noting that group-owned stations' higher ratings for local news programming "suggests that group-owned stations do a superior job of responding to viewer demand for news").

early local news program was also the number one station sign-on to sign-off. Notably -- and contrary to CCC/MAP's fundamental premise that increased ownership concentration reduces attention to local programming -- 85% of the news leaders are group-owned stations (i.e., one of at least three commonly-owned stations). In markets 1 through 5, the news leader is a network (Capital Cities/ABC) station.

In addition, there is evidence that group owners have used their greater resources generated by economies of scale to enhance their local news and public affairs programming.[18] In the 1984 ownership proceeding commenters made several showings that persuaded the Commission that group-ownership of stations fosters increased news and public affairs programming.[19] In this proceeding Tribune Broadcasting Company shows how diversity can be enhanced by permitting increased group ownership "because committed group

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[18] The Commission has consistently recognized the public interest benefits of efficiencies available through multiple ownership of broadcast stations. See Radio Ownership Order, pars. 38-39; Second Report and Order, MM Docket No. 87-7, 4 FCC Rcd 1723, 65 RR 2d 1589, pars. 39-45, 54-61, 64-67 (1989), modified on reconsideration, Memorandum Opinion and Order, 66 RR 2d 1115 (1989); Notice, par. 11.

[19] Ownership Order, pars. 45-55. See also Economic Analysis at 78-80. The Commission noted in 1984 that no opponent to the increase from the seven-station to the twelve-station ownership limit had produced any "evidence indicating that stations which are not group-owned better respond to community needs, or expend proportionately more of their revenues on local programming, or editorialize more frequently on subjects of local interest, or produce more news, investigative journalism, or issue-oriented programming." Ownership Order, par. 53. The CCC/MAP Comments are similarly devoid of any evidence of superior local news and public affairs content in the programming broadcast by non-group-owned stations.

owners like Tribune invest in and create local news and public affairs programming in ways that no single-station owner can."[20] Tribune describes its considerable investments in new local news and public affairs operations in Atlanta, New Orleans and Los Angeles and the creation of a Washington, DC "media center" for sharing news among the Tribune stations as examples of strengthened viewpoint diversity made possible by the broadcast experience and economic resources of group ownership.[21]

Even NASA, which mounts a vociferous attack on relaxing the national ownership limits based on the network "power" that would supposedly result (which issue we discuss below in Section II), concedes that group ownership "by itself does not remove the incentive to respond to local needs because a group owner still is most concerned about the performance of each television station in its individual market."[22] In sum, the probative evidence all confirms the Commission's 1985 finding that "group ownership affirmatively promotes diversity of viewpoints by promoting organizational forms which facilitate new programming."[23]

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[20] Comments of Tribune Broadcasting Company (filed May 17, 1995), at 4 ("Tribune Comments").

[21] Tribune Comments at 21-27.

[22] NASA Comments at 8 n. 5.

[23] Ownership Reconsideration Order, par. 22.

II. Elimination of the National Ownership Rule Would Not Result in Network Power Over Affiliates and Would Not Adversely Affect Localism.

NASA argues that relaxation of the current 25% coverage cap on national ownership would unduly enhance the power networks have over their affiliated stations and that as a result, "localism" -- an affiliate's ability to program local broadcasts rather than national network programming -- will be reduced.[24] The argument is utterly without merit.

First, while not a model of clarity on this point, NASA's comments seem to suggest that the asserted adverse effects on localism would flow from some sort of concentration of market power in the antitrust sense. Thus the comments refer variously to networks' "power" and "market power" over their affiliates. But NASA provides no empirical or economic data to support an antitrust analysis and its hypothesis rests on an asserted market definition that cannot withstand even casual scrutiny.

NASA argues -- without any factual support -- that each network's services constitutes a separate market.[25] But similar arguments were rejected by the Commission and the Court in the fin-syn proceeding and have been rejected by other courts as well,[26] and

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[24] NASA Comments at 2.

[25] NASA Comments at 11.

[26] See United States v. National Broadcasting Company, Inc., CCH Trade Reg. Cas. par. 70,418 at 71, 210 (C.D. Calif. 1993) (holding that no network has market power in program acquisition and implicitly rejecting argument that each network constitutes a separate market); Levitch v. Columbia Broadcasting System, Inc., 495 F. Supp. 649 (S.D.N.Y. 1980) aff'd, 697 F. 2d 495 (2nd Cir. 1983); see generally, Transource International, Inc. v. Trinity

for good reason. Affiliates are restricted to an individual network only to the extent that they have voluntarily entered into contracts that commit them to dealing with that network. If the restrictions on commercial freedom that result from such contractual relationships were enough to create economically meaningful markets limited to the contracting parties, then every firm that is the beneficiary of an option agreement or a supply agreement or, indeed, any agreement that gives it rights exercisable in the future would constitute a separate market and the firm would be a monopolist of that market.[27] There is no support in economics or law for that result.[28] Moreover, the indisputable record of intense competition among networks for the loyalty and contractual commitments of affiliates, evidenced in part by the many recent affiliation changes and the dramatic increases in affiliate compensation, belies any suggestion that

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Industries, Inc., 725 F. 2d 274, 282-83 (5th Cir. 1984); Carlock v. Pillsbury Co., 719 F. Supp. 791, 843 (D. Minn. 1989).

[27] Indeed, if the services of an individual network constituted a separate market, then what NASA calls "the collective bargaining power of all separately-owned affiliates" of each network (p. 7) would itself be a form of market power; and, because the affiliates are "separately-owned," it would probably be illegal market power.

[28] The result finds no support in the Supreme Court's decision in Eastman Kodak Co. v. Image Technical Services, Inc., 112 S. Ct. 2072 (1992). Kodak held only that, depending on the facts, replacement parts for Kodak machines might constitute a separate market for owners of Kodak machines who had not entered into any contract or agreement to buy such parts and were unable to use any other parts. The logic of the case applies only to spare parts; and the case has nothing to do with the situation, like that involving television network affiliates, where certain goods or services are alleged to constitute a separate market simply because the buyer has chosen to enter into a contract to purchase them.

affiliates are unable to deal with or switch to different networks upon the expiration of their affiliation agreements.

Having offered no economic analysis in support of its asserted concern about network power, NASA resorts to a somewhat different hypothesis. NASA hypothesizes that allowing networks to own television stations covering a greater proportion of the country would somehow empower networks to limit affiliates in broadcasting locally-oriented programming. Putting aside the insufficiency of such hypothetical argument to support retention of competition restraints, the hypothesis itself is based on a characterization of the network-affiliate relationship that is demonstrably false.

To start with, NASA's hypothesis rests on an utterly distorted image of a constant battle, time-period by time-period, in which networks apply unrelenting pressures for uniform national programming while affiliates bravely resist to preserve local programming. In actuality, the networks program certain dayparts, which are cleared by most affiliates, and affiliates program other dayparts, to which the networks make no claim and which provide affiliates ample opportunity to present local news and public affairs without preempting network programs.[29] Even with respect to dayparts the networks do program, they cannot force clearances.

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[29] In fact, the networks do not offer programming for one-third of each broadcast day on average. See An Economic Analysis of the Prime Time Access Rule filed Mar. 7, 1995 by Economists Incorporated in Review of the Prime Time Access Rule, MM Docket No. 94-123, Appendix D, Table D-2 (in 1994 three networks offered average of 84.5 hours of programs per week out of 126 hours available in seven 18-hour broadcast days) (the "EI PTAR Analysis").

It is instructive in this regard to look at the trend line of the number of network-programmed hours, which has declined over time. Between 1977 and 1994, ABC, CBS and NBC have offered 25 fewer hours per week of network programming. This demonstrates that when affiliates refuse to support a network program they can and have made that refusal stick and have reclaimed time periods from the network.[30]

NASA's suggestion that "networks recently have taken steps to increase their power in affiliate relationships" likewise distorts reality. The dominant story in the broadcast television industry in 1994, and continuing into 1995, was the unprecedented exercise of affiliates' power in switching network affiliations and negotiating for substantially higher compensation for clearing network programming. Since May 1994, at least 68 television stations have changed their network affiliation, 21 of them shifting from one of the three networks to Fox.[31] During the same period, the three networks increased the total annual compensation paid to their affiliates by an estimated $150 to $200 million.[32]

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[30] See EI PTAR Analysis at 23, Appendix D. See also Ownership Order, par. 99 ("We do not believe that network ownership would result in stations' refusing to transmit programming of intense local interest in order to clear a less desirable part of the network feed."). The trend also disproves NASA's allegation that "networks continue to expand their programming, and seek to occupy more and more of the broadcast day." NASA Comments at 5.

[31] Zier, Fog of War Engulfs Affiliation Battles, Broadcasting & Cable, Dec. 5, 1994, at 50-56.

[32] Jensen, Scrambled Picture - Many TV Stations Switch Networks, Confusing Viewers, Wall Street Journal, Oct. 7, 1994; CBS's Tony Malara: In the Storm of the Eye, Broadcasting & Cable, Dec. 19, 1994, at 34. See also Lafayette, Struggle for Affiliates

Recently two new players, the United Paramount Network and WB Television, have joined ABC, CBS, Fox and NBC in competition for affiliated stations around the country.[33]

But perhaps most fundamentally, NASA's hypothesis ignores the fact that the network/affiliate relationship is based on cooperation to achieve the shared goal of joint profit maximization. A network and its affiliates are partners in an enterprise whose success is dependent on attaining the nationwide circulation necessary to attract the advertising dollars which is in turn necessary to support the expensive and high-quality programs that make up the network schedule. Affiliates clear programming not because they are forced to but because they recognize that high clearance levels are necessary for their own success -- if, as a group, they did not clear, the networks would fail and they would be competitively outmatched by network-quality programs on competing stations in their markets. It is for that reason that clearance levels are high and have always been high in

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Still Fierce, Electronic Media, May 15, 1995, at 32 ("competition among the networks for affiliates remains intense"); Olgeirson, TV Stations Rotate Around the Dial, Denver Business Journal, Feb. 17, 1995, at D12 (Denver station manager commenting on 3-station affiliation switch "believes all three stations will come out ahead on compensation because of increased bargaining power among affiliates").

[33] EI PTAR Analysis at 15-16. In comments filed on June 12, 1995 in the Inquiry into Fox Television Stations, Inc., at 2, Hubbard Broadcasting -- owner of eight stations affiliated with ABC or NBC -- makes note of the increased competition among networks for affiliates and concludes that "the existence of the fourth network has required the other networks to strengthen their relationships with their affiliates and pay greater attention to the interests of those affiliates."

prime time.[34]

At the same time, networks have always accommodated the affiliates' right to preempt programs unsuitable in their communities or to broadcast programs of greater local or national importance to the full extent allowed by the Commission's "right to reject" rule.[35] Indeed, it would be contrary to a network's self-interest to interfere with an affiliate's local news or public service because the affiliate that serves its community well is more valuable to the network. As we have shown in another proceeding, the success of each network's prime-time schedule is closely linked to the strength of the lead-in provided by its affiliates' local news programs.[36]

But the very fact that each affiliate benefits from the mass clearance of all other affiliates carries with it the potential for abuse and it is that abuse that sometimes engenders disagreement. Each affiliate, standing alone, can be subject to the temptation to take a "free ride" on the general benefits of the network/affiliate relationship by engaging in selective preemptions, unrelated to the needs of its local community, solely for its own economic reasons (such as when it will retain a greater share of revenue from the substituted programming). But an individual affiliate can afford to engage in such economically motivated selective preemptions only

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[34] See EI PTAR Analysis at 90.

[35] 47 C.F.R. 73.658(e).

[36] See Comments of Capital Cities/ABC, Inc. (filed Mar. 23, 1992) in MM Docket No. 82-434 at 13 and Exhibit D.

if the vast majority of other affiliates continue to clear the network program. If all other affiliates elected to preempt the network program, the mass circulation advertisers require and, in consequence, the underlying economic value of the network/affiliate enterprise would be destroyed. The fact that networks seek to discourage free riding -- by no means with regular success -- hardly shows a network regime to "thwart local decision making and impose national programming."[37]

In sum, affiliates are not unwilling captives of network masters. They are, in fact, willing and independent economic actors whose own welfare also depends upon the clearances that NASA suggests are being forced upon them. The premium prices affiliates stations command in the marketplace are a function of the success of network-affiliate cooperation.

Finally, NASA suggests that the networks will somehow need non-owned affiliates less if they own more stations. But that premise is plainly false. The network business is based on the ability to deliver to national advertisers a mass audience that covers all or substantially all markets. As a result, a network cannot afford to ignore markets in which it does not own a station. In fact, in the face of new competition from Fox and the emerging networks, all of the networks have been pursuing such a strategy of shoring up circulation through long-term contracts. If NASA was right, once a network obtained stable affiliations in major

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[37] NASA Comments at 6. Indeed, NASA itself cites occasions when local affiliates have preempted network programs pursuant to the right to reject. Id. at 4.

markets, it would have little interest in maintaining smaller-market affiliations. Instead, far from disregarding the small markets, the networks continue to pursue long-term deals and offer increased compensation in those markets.[38]

In short, networks and affiliates need each other. There is no case for the view that affiliates need Commission protection against presumed network market power.

## III. Elimination of the National Ownership Rule Would Lead to Significant Pro-Competitive Benefits.

As we demonstrated in our initial comments in this proceeding, elimination of the national ownership rule would enhance competition by allowing group owners who are able to operate stations in the most efficient manner by exploiting economies of scale to expand their station portfolios. Group ownership by network companies would make possible a number of demonstrable efficiencies. Network television is a highly risky and variable business which requires investments of billions of dollars each year in programming well in advance of any revenue commitments from advertisers. Ownership of additional stations would spread the risk of the network's investment by providing a more stable and predictable source of revenue than the television network business.

New opportunities for station investment would come at a crucial time for network companies as the success of competitive services has substantially reduced the national viewership of

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[38] See Lafayette, Struggle for Affiliates Still Fierce, Electronic Media, May 15, 1995, at 32.

networks.[39] As the video marketplace grows even more competitive -- and some even question the long-term viability of over-the-air broadcasting -- the fear of networks expressed by NASA and others should not be permitted to stand in the way of the networks seeking to remain strong through increased station ownership to meet this new competition.

Respectfully submitted,

By: ______________________

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July 10, 1995

[39] The three original networks have continued to lose audience to their competitors; their collective average prime time household share for the 1994-95 season was 57, four share points below the previous season's 61. Nielsen Television Index.

## SIGN-ON/SIGN-OFF RANK OF #1 LOCAL EARLY EVENING NEWS STATIONS

*FEBRUARY 1995*

Exhibit A

**MARKET RANKS 1 - 10**

| RANK | MARKET | #1 STATION LOCAL EARLY EVENING NEWS | #1 STATION SO/SO (7:00AM-1:00AM) | # 1 LOCAL EARLY EVENING NEWS OWNERSHIP | GROUP OWNER (3+ TV STATIONS) |
|---|---|---|---|---|---|
| 1 | NEW YORK | WABC | same | CAPITAL CITIES | Y |
| 2 | LOS ANGELES | KABC | same | CAPITAL CITIES | Y |
| 3 | CHICAGO | WLS | same | CAPITAL CITIES | Y |
| 4 | PHILADELPHIA | WPVI | same | CAPITAL CITIES | Y |
| 5 | SAN FRANCISCO | KGO | same | CAPITAL CITIES | Y |
| 6 | BOSTON | WCVB | same | HEARST BDCSTNG | Y |
| 7 | WASHINGTON, DC | WUSA | same | GANNETT BDCSTNG | Y |
| 8 | DALLAS | WFAA | same | A.H. BELO CORP | Y |
| 9 | DETROIT | WDIV | same | POST-NEWSWEEK | Y |
| 10 | ATLANTA | WSB | same | COX ENTERPRISES | Y |

**MARKET RANKS 41-50**

| RANK | MARKET | #1 STATION LOCAL EARLY EVENING NEWS | #1 STATION SO/SO (7:00AM-1:00AM) | # 1 LOCAL EARLY EVENING NEWS OWNERSHIP | GROUP OWNER (3+ TV STATIONS) |
|---|---|---|---|---|---|
| 41 | NEW ORLEANS | WWL | same | A.H. BELO CORP | Y |
| 42 | MEMPHIS | WMC | same | ELLIS COMM | Y |
| 43 | OKLAHOMA CITY | KFOR | same | PALMER COMM | N |
| 44 | HARRISBURG, PA | WGAL | same | PULITZER | Y |
| 45 | WEST PALM BEACH | WPTV | same | E.W. SCRIPPS CO. | Y |
| 46 | PROVIDENCE | WJAR | same | OUTLET COMM | Y |
| 47 | WILKES BARRE | WNEP | same | NEW YORK TIMES | Y |
| 48 | GREENSBORO | WFMY | same | GANNETT | Y |
| 49 | ALBUQUERQUE | KOAT | same | PULITZER | Y |
| 50 | LOUISVILLE | WHAS | same | PROVIDENCE JOURNAL | Y |

**MARKET RANKS 91-100**

| RANK | MARKET | #1 STATION LOCAL EARLY EVENING NEWS | #1 STATION SO/SO (7:00AM-1:00AM) | # 1 LOCAL EARLY EVENING NEWS OWNERSHIP | GROUP OWNER (3+ TV STATIONS) |
|---|---|---|---|---|---|
| 91 | JOHNSTOWN-ALTOONA | WTAJ | WJAC | GATEWAY COMM | Y |
| 92 | BURLINGTON | WCAX | same | MOUNT MANSFIELD | N |
| 93 | TRI CITIES | WCYB | same | LAMCO COMM | Y |
| 94 | YOUNGSTOWN | WFMJ | same | NPM INC | N |
| 95 | EVANSVILLE | WFIE | same | COSMOS BDCSTNG | Y |
| 96 | BATON ROUGE | WAFB | same | AMERICAN FAMILY | Y |
| 97 | COLORADO SPRINGS | KKTV | same | ACKERLEY COMM | Y |
| 98 | WACO-TEMPLE | KWTX | same | KWTX BROADCASTING | N |
| 99 | SPRINGFIELD, MA | WWLP | same | BRISSETTE BDCSTNG | Y |
| 100 | EL PASO | KVIA | KTSM | MARSH MEDIA | Y |

**MARKET RANKS 141 - 150**

| RANK | MARKET | #1 STATION LOCAL EARLY EVENING NEWS | #1 STATION SO/SO (7:00AM-1:00AM) | # 1 LOCAL EARLY EVENING NEWS OWNERSHIP | GROUP OWNER (3+ TV STATIONS) |
|---|---|---|---|---|---|
| 141 | ERIE | WJET | same | JET BROADCASTING | N |
| 142 | TOPEKA | WIBW | same | STAUFFER COMM | Y |
| 143 | SIOUX CITY | KTIV | same | QUINCY BDCSTNG | Y |
| 144 | TERRE HAUTE | WTHI | same | WABASH VALLEY BDCST | Y |
| 145 | MEDFORD | KDRV | KTVL | CHAMBERS COMM | Y |
| 146 | ROCHESTER, MN | KIMT | same | SPARTAN RADIOCASTING | Y |
| 147 | JOPLIN | KOAM | same | SAGA COMM | N |
| 148 | BINGHAMTON | WBNG | same | GATEWAY COMM | Y |
| 149 | COLUMBIA-JEFFERSON | KRCG | same | MEL WHEELER COMM | Y |
| 150 | BLUEFIELD-BECKLEY | WVVA | same | QUINCY BDCSTNG | Y |

*SOURCE: NSI, FEBRUARY 1995 SURVEY PERIOD*